Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company; Reliable Tile Co., Inc. *and* Tile Layers Local Union No. 19, Bricklayers and Allied Craftsmen of America, AFL-CIO. Case 20-CA-16909

27 February 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 15 June 1983 Administrative Law Judge Russell L. Stevens issued the attached decision. The General Counsel filed limited exceptions and a supporting brief, the Respondents filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions and to adopt the recommended Order.

We agree with the judge that Respondent Dependable Tile Company violated Section 8(a)(5) of the Act by refusing to honor and abide by the contract concluded between the Associated Tile Contractors of Northern California (a multiemployer bargaining association—herein Association) and the Union.

On or about 31 December 1980 Respondent Dependable informed the Association and the Union that, as of 31 March 1981,[3] it would no longer consider the expiring contract to be binding on it. Respondent Dependable also informed them that it would not be bound by any future contract not personally signed by its president, Jack Hartman. Thus, Respondent Dependable gave notice which, absent subsequent events, would constitute timely and unequivocal withdrawal from multiemployer bargaining.

However, on 16 January Respondent Dependable tendered quarterly dues to the Association, and between 20 January and 31 March Hartman actively participated, as a part of the Association's negotiating committee, in formal negotiating sessions seeking agreement on a new contract. After 31 March Hartman no longer participated in the Association-Union negotiations, and on 15 November Respondent Dependable refused to sign the contract reached by the Association and the Union.

Our dissenting colleague finds that Hartman's participation in the group negotiating sessions up to 31 March was consistent with Respondent Dependable's decision to leave multiemployer bargaining as of 31 March. If Hartman had merely participated in the sessions in order to administer the expiring contract—to which Respondent Dependable was admittedly bound—we would agree with our colleague. However, to renew its membership in the Association and participate actively in group negotiations for a *new* multiemployer agreement is clearly inconsistent with a stated intent to abandon group bargaining and negotiate separately. Hartman sought the "best of the two worlds"—the conduct prohibited by the Board's decisions in *Associated Shower Door Co.*, 205 NLRB 677 (1973), and *Michael J. Bollinger Co.*, 252 NLRB 406 (1980). That is, Hartman continued in group negotiations in an attempt to secure satisfactory terms in the multiemployer agreement, but at the same time he attempted to reserve the right to reject any agreement not to his liking. Thus, Hartman acted in a manner inconsistent with Respondent Dependable's withdrawal from group bargaining. Accordingly, Respondent Dependable nullified its withdrawal from multiemployer bargaining, and it must honor the contract reached through multiemployer bargaining.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company, Loomis, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

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[1] The complaint alleges that Respondent Reliable Tile Co. had unlawfully refused, essentially in a manner similar to that of Respondent Dependable Tile Company, to abide by the collective-bargaining agreement negotiated and signed by the multiemployer bargaining association in October 1981. At the close of the General Counsel's case at the unfair labor practice hearing, the judge granted Reliable's motion to dismiss the allegations against Reliable on the ground that there was no evidence in the record that Reliable had failed to comply with the new contract. The only evidence in the record concerning the matter was a letter from the Union to Reliable dated 21 January 1982 stating that Reliable was covered by the new contract, demanding an accounting of all funds due from Reliable to the industry trust funds since the effective date of the new contract, and noting that if no reply was received by 1 February the Union would assume Reliable did not intend to comply with the new contract. We agree with the judge, for the reasons expressed in his oral dismissal of the allegations and in his written reaffirmation in his decision, that the complaint must be dismissed with respect to Reliable Tile Co.

[2] The judge stated that the 1 April 1978 to 31 March 1981 collective-bargaining agreement (the blue book) was superseded by the brown book collective-bargaining agreement. The record shows that the brown book was not signed or put into effect by the multiemployer bargaining association and the Union, but that the similar contract known as the yellow book was agreed to and signed in October 1981. This inadvertent error does not affect our adoption of the judge's ultimate conclusions.

[3] Unless otherwise specified, all dates hereinafter are in 1981.

CHAIRMAN DOTSON, dissenting.

In my view, Respondent Dependable Tile Company did not violate Section 8(a)(5) by refusing to honor the collective-bargaining agreement between the multiemployer bargaining association and the Union. Unlike my colleagues, I cannot find that Dependable Tile took any action inconsistent with its timely unequivocal notification to both the Union and the multiemployer bargaining association that it was withdrawing from the multiemployer unit as of 31 March 1981, and therefore must dissent from the majority's conclusion that Dependable Tile's conduct subsequent to its December withdrawal letter nullified its otherwise lawful withdrawal.

The operative facts, which are not in dispute, can be concisely summarized. Dependable Tile joined the Associated Tile Contractors of Northern California (the multiemployer bargaining association—herein Association) in 1979. Jack Hartman, sole owner of Dependable Tile, thereafter joined the Association's negotiating committee. The Association had a collective-bargaining agreement with the Union running from 1 April 1978 to 31 March 1981. On 31 December 1980 Hartman sent a certified letter to the Association stating that as of 31 March 1981 Dependable Tile "will resign from" the Association and as of 11:59 p.m. that day Dependable Tile would no longer be associated with the Association "or with any agreements, contracts, or dealings" the Association thereafter had with the Union. A similar letter was sent on the same day to the Union stating that as of 31 March 1981 Dependable Tile would not recognize any contract or agreement entered into by the Union and any organization unless personally signed by Jack Hartman. Both letters were received by the respective addressees in early January 1981. Formal contract negotiations began on 14 January. On 16 January Dependable Tile tendered to the Association its quarterly dues, which covered 1 January to 31 March 1981. Negotiating sessions between the Association and the Union were held on 20 January, 6 February, and 3, 10, 26, and 31 March 1981. Hartman was present at those meetings and participated as a member of the Association's bargaining committee. The existing contract expired at midnight 31 March. After 31 March negotiating meetings were held between the Union and the Association, and certain employers signed interim agreements. Hartman neither participated in nor attended any of the post-31 March meetings, and Dependable Tile refused to sign an interim agreement as well as the later negotiated new 3-year contract.

The majority concedes that the 31 December 1980 letters constituted timely unequivocal withdrawal by Dependable Tile from the multiemployer bargaining unit and would constitute, absent subsequent nullification, withdrawal from the Association. I agree with that position. Where I part with the majority is in their approval of the Acting Regional Director's[1] construal of Hartman's post-31 December conduct as inconsistent with the 31 December letters, thereby constituting a nullification of the withdrawal. The Acting Regional Director's analysis in the underlying representation case, adopted by the judge, consists of first noting that, after sending the 31 December letters, Dependable Tile paid the Association dues for the first quarter of 1981 and Hartman participated as an association member in the six negotiating meetings held between 20 January and 31 March 1981. Then, citing *Associated Shower Door Co.*, 208 NLRB 677 (1973), and *Michael J. Bollinger Co.*, 252 NLRB 406 (1980), for the proposition that an employer cannot have the best of both worlds by withdrawing from the multiemployer unit while subsequently continuing to negotiate in the multiemployer unit, the Acting Regional Director concluded that Hartman's post-31 December conduct nullified his withdrawal. In my view, the Acting Regional Director and the majority have failed to take into account the glaring factual difference between the *Shower Door/Bollinger* cases and the instant case, and thus have mistakenly applied here the holding of those cases. That critical distinction is straightforward: in *Shower Door* and *Bollinger* an employer informed the union and multiemployer unit that effective immediately it was withdrawing from the unit, but afterwards the employer took action directly inconsistent with that immediate withdrawal; in the instant case, Dependable Tile informed the Union and the Association in early January that *effective on the existing contract's expiration date* (31 March 1981) it was withdrawing from the unit, and afterwards took no action directly or indirectly inconsistent with its announced anticipatory withdrawal. Specifically, in *Shower Door* the three employers notified the union and the multiemployer bargaining association on 3 and 6 October, respectively, that they were withdrawing from the association

[1] Dependable Tile filed an RM petition in 1981 (Case 20-RM-2380) and argued at that hearing that a unit limited to Dependable Tile employees was appropriate as it had timely withdrawn from the multiemployer bargaining association. The Acting Regional Director issued on 25 September 1981 a decision and order dismissing the petition as involving an inappropriate unit in that Hartman's conduct after sending the 31 December letters nullified the attempted withdrawal from the multiemployer unit. The Acting Regional Director reaffirmed that conclusion in a 23 October 1981 supplemental decision, and the Board by mailgram of 12 January 1982 denied review.

and revoking its authority to bargain on their behalf. Yet subsequently two of those employers attended and participated as association representatives at negotiating meetings with the union, and one of those employers later met with other association members to draft a final offer. These actions clearly were inconsistent with the earlier withdrawal, and the Board so found.[2] Similarly, in *Bollinger* the employer wrote the union on 26 January 1979 that "effective today, January 26, 1979, we are withdrawing" from the multiemployer bargaining unit. Yet subsequently the employer's president attended three negotiating meetings with the union, serving at each as chief spokesman for the association. Again, these later actions clearly were inconsistent with the earlier withdrawal, and the Board so found. In the present case, however, all of Dependable Tile's actions after its 31 December unequivocal notice of withdrawal were consistent with withdrawal as of the specified contract expiration date of 31 March 1981. Thus, Dependable Tile, in January 1981, paid its Association dues for the 1 January to 31 March 1981 period; it did not pay dues for any time after it said it was going to withdraw from the Association. Hartman attended as a member of the Association at the negotiating meetings with the Union through 31 March 1981; he did not participate in or attend the first negotiating meeting (held 7 April) after the date Dependable Tile had said it would withdraw, and did not participate in or attend any of the three other Association-Union negotiating sessions held after the previously announced 31 March cutoff date. Indeed, the Union asked at the 7 April meeting where Hartman was, to which the Association's negotiator replied that Hartman was not a member of the Association.[3] At that same meeting, the Union asked the Association for a list of employers who had resigned from the Association. The Association sent that list to the Union on 13 May;[4] Dependable Tile was included thereon.[5] Further, Dependable Tile was not listed in either the brown book contract or the yellow book contract as an employer covered by either agreement. Simply put, Dependable Tile told the Union and the Association in early January that it would be a member of the Association until the contract expired, at which time it would cease to be a member of the multiemployer bargaining unit. Each of Dependable Tile's subsequent actions and statements was consistent with that notice. As Dependable Tile took no action inconsistent with its timely and unequivocal notice to the Union and the multiemployer association, I would not apply the holding of *Shower Door* or *Bollinger* to this case and would not find Dependable Tile's withdrawal to have been unlawful. Rather, I would dismiss the complaint in its entirety.

[2] The Ninth Circuit enforced the Board's Order. *NLRB v. Associated Shower Door Co.*, 512 F.2d 230 (1975).

[3] This was the uncontroverted testimony of the Union's secretary-treasurer at the unfair labor practice hearing.

[4] This was according to the written statement of the Association's executive secretary entered into evidence at the unfair labor practice hearing.

[5] A copy of the letter was introduced into evidence at the unfair labor practice hearing.

DECISION

STATEMENT OF THE CASE

RUSSELL L. STEVENS, Administrative Law Judge: This case was tried in Sacramento, California, on March 22, 1983. The complaint, issued March 31, 1982, is based upon a charge filed February 11, 1982, by Tile Layers Local Union No. 19, Bricklayers and Allied Craftsmen of America, AFL-CIO (Union). The complaint alleges that Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company and Reliable Tile Co., Inc. (Respondents)[1] violated Section 8(a)(5) and (1) of the National Labor Relations Act (Act).

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed by counsel for the General Counsel, Respondent, and Charging Party.

On the entire record and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, Respondent Dependable has been owned by Jack E. Hartman, a sole proprietorship doing business as and trading under the name of Dependable Tile Company, with an office and place of business in Loomis, California, where it is engaged as a tile contractor in the building and construction industry. During the calendar year ending 1981, Dependable, in the course and conduct of its business operation, derived gross revenues in excess of $500,000, and purchased and received at its Loomis, California facility and its various construction sites located in the State of California products, goods, and materials valued in excess of $50,000 from other enterprises, including Bedrosian and Western State Stone, located within the State of California, each of which enterprises had received said products, goods,

[1] At trial, pursuant to motion by Respondent Reliable's counsel, granted by me, Respondent Reliable Tile Co., Inc. was dismissed as a party herein. The dismissal was ordered at the close of the General Counsel's case presentation, on the basis that a prima facie case had not been established against Reliable. At trial, on two occasions of record and on one occasion off the record, I suggested that the General Counsel take an interim appeal of the dismissal to the Board, but that suggestion was not followed. In his brief, counsel for the General Counsel asked for reconsideration of Reliable's dismissal. That request has been granted, and the record and the dismissal carefully have been reconsidered. The ruling at trial is reaffirmed, for the reasons given at that time.

and materials directly from points outside the State of California.

I find that Respondent Dependable is, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Tile Layers Local Union No. 19, Bricklayers and Allied Craftsmen of America, AFL-CIO, is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*[2]

The Associated Tile Contractors of Northern California (the Association) was organized approximately in 1975 or 1976, and Dependable became a member of the Association approximately in 1979. The Association is authorized by its members to bargain collectively with the Union on their behalf. The Tile Contractors Association of Northern California (Bay Area Association) is an employer group that has been in existence longer than the Association, and it too is authorized by its members to bargain collectively with the Union on their behalf.

The Association, the Bay Area Association, and the Union had a three-party agreement for the term April 1, 1978, to March 31, 1981.[3] The agreement had a 60-day notice period for termination. That an agreement was superseded by one for the term April 1, 1981, to March 31, 1984.[4] The Association and the Union have an agreement between the two of them, effective April 1, 1981, to September 30, 1983.[5] This agreement (the yellow book) was reached approximately October 13, 1981, and Dependable has refused to abide by its terms, although requested to do so by the Union in letters dated November 15, 1981, and January 13, 1982.

Soon after Dependable became a member of the Association in 1979, Jack Hartman, Dependable's sole owner, became a member of the Association's negotiating committee, and participated in negotiations with the Union. On April 30, 1980; July 11, 1980; November 7, 1980; and December 19, 1980, a series of meetings were held between representatives of the Association and the Union. Those meetings were held pursuant to provisions of the blue book, and the minutes of the meetings referred to them as "Joint Arbitration Meetings." However, both general and specific items relating to contract negotiations were discussed at the meetings. Hartman was in attendance, and at the meeting of April 30, 1980, proposed that the new contract for 1981-1984 be between the Association and the Union, and not among the Association, the Bay Area Association, and the Union.

On December 31, 1980, Dependable informed the Association and the Union that, as of March 31, 1981, it no longer would consider any portion of the expiring contract as binding upon it, and that it would not be bound by any later contract not personally signed by Hartman. Thereafter, Dependable paid its first quarter Association dues through March 31, 1981, and Hartman continued to participate in negotiations as a member of the Association bargaining committee. Formal contract negotiation sessions began January 14, and Hartman participated in sessions on January 20, February 6, March 3, March 10, March 26, and March 31, 1981.

The blue book expired March 31, 1981, and employees represented by the Union solicited interim agreements from individual employers, including Dependable, and some employers signed them. Hartman refused to sign an interim agreement for Dependable. On April 7, 1981, the Association and the Union met, and agreed in writing that they had reached a new 3-year contract agreement, with specific provisions for wage and benefit increases, among other things. However, the parties agreed that, as of that time, some issues had not been resolved. Hartman was not at the meeting of April 7, and never has signed, or agreed to, the brown book or the yellow book.

Pursuant to a petition filed by Dependable in Case 20-RM-2380, relating to Dependable's tile layer employees,[6] a formal hearing was conducted by the National Labor Relations Board (Board) on September 2, 1981. Dependable alleged at the hearing that it no longer was a member of the Association, and that an employee unit limited to Dependable's employees was the appropriate unit, since Dependable timely had withdrawn from the Association. On September 25, 1981, a decision and order was issued by the Acting Regional Director for the Board's Region 20, finding that Dependable had not effectively withdrawn from the Association, and that a single-employer (Dependable) employee unit was inappropriate.

On September 29, 1981, Dependable filed a request for reconsideration of the Acting Regional Director's decision and order of September 25, and raised three issues: (a) whether Dependable's withdrawal from the multiemployer unit was timely; (b) whether the Union acquiesced in the withdrawal by asking Dependable to sign an interim agreement; and (c) whether the Association's written understanding reached with the Union on April 7, referred to supra, constituted a bar to Dependable's petition. By supplemental order and decision dated October 23, 1981, the Acting Regional Director stated that the first issue previously was decided; that it was not necessary to reach the third issue; and that relative to the second issue, Dependable's arguments were not meritorious. Finally, the Acting Regional Director found that Dependable had failed to show, as it had alleged, that the Association had collapsed or had been disbanded, and also found that Dependable had not shown unusual circumstances to justify its withdrawal from the Association.

Dependable requested that the Board review the Acting Regional Director's decision and supplemental

[2] This background summary is based upon stipulations of counsel, and upon credited testimony and evidence not in dispute.

[3] Referred to as the blue book, Jt. Exh. 8.

[4] Referred to as the brown book, Jt. Exh. 9.

[5] Referred to as the yellow book, Jt. Exh. 7.

[6] Dependable's tile finisher employees are represented by Local 127 of the Tile Finishers Union.

decision, and by mailgram dated January 12, 1982, the Board stated, inter alia, that Dependable's appeal "has been carefully considered and is hereby denied as it raises no substantial issues warranting review."

B. *Discussion*

Dependable's principal argument is that it withdrew from the Association, with the Union's consent, and therefore cannot be bound to any contract between the Association and the Union. That argument is based almost entirely upon evidence that was, or could have been, presented at the hearing in Case 20–RM–2380 on September 2, 1981. The argument was considered by the Acting Regional Director in his decision and order of September 25, who concluded "that by his participation in the Association negotiations, Hartman manifested an intention to be bound by group, rather than individual bargaining; and hence, he nullified his December 31, 1980, withdrawal from the Association, assuming that withdrawal was timely, which issue I find unnecessary to reach."

The General Counsel's complaint in this case alleges, in brief, that Dependable is a member of the Association and represented by it for purposes of collective bargaining, but refuses to abide by the bargaining agreement reached by the Association and the Union on or about October 13, 1981. In its answer to the complaint Dependable alleges, inter alia, that it timely withdrew from the Association, with the Union's consent, and therefore is not bound by any contract between the Association and the Union. The answer also alleges that the Association no longer is an employer representative because of its greatly reduced membership and its fragmented existence.

It is seen, therefore, that the issues in this case virtually are identical with those in Case 20–RM–2380. The defense to the complaint in this case was the basis for Dependable's petition in Case 20–RM–2380.

Section 102.67(F) of the Board's Rules and Regulations concerning procedure in representation cases states:

> The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating . . . any issue which was, or could have been, raised in the representation proceeding. Denial of a request for review shall constitute an affirmance of the regional director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.

In one of the many cases relating to this issue, the Board stated:[7]

> It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding. [Fn. omitted.]

In this case, Dependable neither offered nor introduced any newly discovered or previously unavailable evidence, nor were any special circumstances shown that require a reexamination of Case 20–RM–2380. The only event of note that occurred after September 2, 1981, was the signing of the yellow book in October 1981, which did not list Dependable as an employer covered by that agreement. However, that fact was similar to facts adduced during the hearing of Case 20–RM–2380, and did not constitute a showing that Dependable was not a member of the Association, bound by the Association's contract with the Union.[8] Further, it is clear from the record that the Union never has agreed that Dependable is not bound by the Association contract. It denied such an agreement at the hearing on September 2, 1981, and again at trial herein. Between those two dates the Union twice asked in writing that Dependable abide by the agreement, since it was bound to it, and Dependable refused those requests.

C. *The 10(b) Matter*[9]

Dependable argues that the complaint is time-barred under Section 10(b) of the Act, based upon the allegation that the Union acknowledged in April 1981 that Dependable had "gone non-union." Even if that statement is accepted as accurate, it would not necessarily create the cause of action alleged in the charge and complaint. In any event, regardless of any such statement, it is found that Dependable did not withdraw from the Association and, as a member thereof, it was under a continuing obligation, to the present, to abide by the yellow book signed by the Association and the Union.[10]

This defense is without merit.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent Dependable violated Section 8(a)(5) and (1) of the Act, I shall recommend that it be ordered to cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

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[7] *Levitz Furniture Co. of Santa Clara*, 211 NLRB 417 (1974). See also *Roberts Electric Co.*, 227 NLRB 1312, 1316 (1977), and *Wickes Furniture Co.*, 261 NLRB 1062 (1982).

[8] See *Reliable Roofing Co.*, 246 NLRB 716 (1979); *Preston H. Haskell Co.*, 238 NLRB 943 (1978); *I. C. Refrigeration Service*, 200 NLRB 687 (1972).

[9] Dependable argues as a defense that it possessed objective considerations which led it reasonably to doubt the Union's majority support among its employees. That defense was not supported by evidence, and is found to be without merit.

[10] *Bill O'Grady Carpet Service*, 185 NLRB 587, 590 (1970).

Having found that Dependable violated its obligation under the Act by repudiating the agreement between the Association and the Union effective April 1, 1981, to September 30, 1983, I shall recommend that Dependable be ordered upon request to comply with its terms retroactively to November 15, 1981,[11] and to make whole employees and union trust funds, for losses, if any, they may have suffered by Dependable's refusal to honor the agreement, with interest thereon to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as set forth in *Isis Plumbing Co.*, 138 NLRB 716 (1962), and *Florida Steel Corp.*, 231 NLRB 651 (1977).

On the basis of the above findings of fact and on the entire record, I make the following

CONCLUSIONS OF LAW

1. Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Tile Layers Local Union No. 19, Bricklayers and Allied Craftsmen of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees within the bargaining unit described in the collective-bargaining agreement between the Associated Tile Contractors of Northern California and the Union, dated April 1, 1981, to September 3, 1983, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times since April 1, 1978, the Union has been, and now is, the exclusive representative of the employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By failing and refusing since on or about November 15, 1981, to honor the collective-bargaining agreement effective April 1, 1981, to September 30, 1983, between the Association and the Union covering the employees in the appropriate unit, Dependable has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

ORDER[12]

The Repondent Jack E. Hartman, a Sole Proprietorship, d/b/a Dependable Tile Company, Loomis, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to honor the collective-bargaining agreement effective April 1, 1981, to September 30, 1983, between the Association and the Union, applicable to the employees in the appropriate unit described above.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Upon request, bargain collectively with the Union for the appropriate unit with respect to rates of pay, wages, hours of work, and other terms and conditions of employment.

(b) Give effect retroactive to November 15, 1981, to the terms and conditions of the agreement described above between the Association and the Union, and make whole its employees and union trust funds for losses, if any, they may have suffered as a result of Dependable's refusal to abide by the aforesaid agreement, with interest, as set forth in the Remedy section hereof.

(c) Preserve and, on request, make available to the Board and its agents for examination and copying, all payroll records, social security payments records, timecards, personnel records and reports, and all other records necessary to compute the amount of backpay due under the terms of this Order.

(d) Post at its place of business in Loomis, California, copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by its authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[11] This is the date alleged in the complaint, and shown at trial, to be the date of the Union's first request that Dependable sign the yellow book, which Dependable refused to do. This date is within the 10(b) period for make-whole purposes.

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[13] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a trial at which all parties had an opportunity to present evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act and we have been ordered to post this notice.

WE WILL NOT fail or refuse to honor the contract effective April 1, 1981, to September 30, 1983, between Associated Tile Contractors of Northern California and Tile Layers Local Union 19, Bricklayers and Allied Craftsmen of America, AFL-CIO, applicable to our employees in the following appropriate unit:

All employees within the bargaining unit described in the collective-bargaining agreement between the Associated Tile Contractors of Northern California and the Union, dated April 1, 1981, to September 30, 1983.

WE WILL NOT refuse to bargain collectively with the Union for the unit described above with respect to rates of pay, wages, hours of work, and other terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed in Section 7 of the Act.

WE WILL, upon request, bargain collectively with the Union for the unit described above with respect to rates of pay, wages, hours of work, and other terms and conditions of employment.

WE WILL give effect retroactive to November 15, 1981, to the contract described above.

WE WILL make whole employees and union trust funds for losses, if any, they may have suffered as a result of our refusal to honor said contract on and after said date, with interest.

JACK E. HARTMAN, A SOLE PROPRIETORSHIP, D/B/A DEPENDABLE TILE COMPANY